FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

First Appeal No. 245/2007

(Nitin Punjabrao Pund **VERSUS** Sau.Mala Ambadas Pande **)**

Appeal — District :
Application No. — of 200
Writ petition

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Mr. Jaipurkar, Advocate for the appellant.
Ms.Tiwari, Adv. H/f Shri Mardikar, Advocate for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 30th July, 2007.

Heard Mr. Jaipurkar, the learned counsel for the appellant and Ms. Tiwari, Advocate holding for Shri Mardikar, the learned counsel for the respondent.

Since this Court had interviewed the child as well as the parties on 24.07.2007, this Court had put the parties to the notice that the matter would be finally heard and disposed of on 27.07.2007. The first appeal is, therefore, being heard and finally disposed of today.

The appellant herein has challenged the judgment passed by the District Judge, Amravati in Miscellaneous Civil Application No. 94/2006 on 23.02.2007 whereby the respondent is appointed as guardian of minor

Durgesh and order of interim custody during the pendency of the Miscellaneous Civil Application No. 94/2006 is confirmed.

A few facts giving rise to this first appeal are stated thus-----

The respondent had moved an application for custody of her minor grandson Durgesh who was born on 12.09.2003. According to the respondent/ applicant, her daughter Anita was married to the appellant. However, her daughter died as a result of burn injuries on 01.11.2005. Since the marriage was solemnised between deceased Anita and the appellant on 02.07.2002 and since the cause of the death of deceased Anita was burn injuries, the police had registered an offence against the appellant under Section 498-A and Section 304 of the Penal Code. It is not in dispute that the criminal case is pending against the appellant herein.

The custody of the minor, Durgesh was handed over to the respondent on 04.11.2005 i.e. immediately after the death of his mother Anita. The minor child Durgesh is in the custody of the respondent for nearly two years. The evidence was tendered before the District Judge to show that the brother of

the appellant by name Pravin had given his no objection to the respondent to take the custody of the minor child. It is not in dispute that since 04.11.2005 till this date, the minor child is residing with the respondent and is admitted in school and is also attending the school regularly. It is also brought on record that the appellant did not take any efforts to meet the minor child during the past couple of years nor did he pay any maintenance amount for the child.

Before the trial Court, both the parties tried to canvass that both of them were having sound financial condition and had a lot of affinity for the minor. The trial Court, however, noticed that the appellant was released on bail during the pendency of the criminal trial and the proceedings were pending against him. The Court observed that it was not proper in the facts and circumstances of the case to handover the custody of the minor to the appellant father during the pendency of the criminal trial. The Court relied on certain decisions of this as well as the Apex Court to decline the custody of the minor to the appellant during the pendency of the criminal case against him. The Court observed that the appellant was at

liberty to file a fresh application for custody of the minor after the criminal case is decided. The trial Court further allowed the appellant to meet his minor son Durgesh whenever he wanted to meet him, in presence of two respectable persons of his choice at the house of the respondent or in school in presence of Head Mistress.

The judgment passed by the trial Court on 23.02.2007 needs to be confirmed for the reasons recorded by the trial Court as well as for some additional reasons. The parties were directed to remain present in this Court on 24.07.2007. The respondent was also directed to produce the minor child in this Court. I had an occasion to interview both the respondent and the appellant as well as the minor child on that day. The child is of an extremely tender age and was not in a position to recognise his father. This Court, recorded in the order dated 24.07.2007 that the physical appearance of the child and his behaviour clearly showed that he was looked after by the respondent grandmother, very well. This Court further recorded that the child was continuously clinging to his grandmother when the parties were being

interviewed for about half an hour. The child of an extremely tender age is staying with his grandmother for the past couple of years. During this period, it appears that the grandmother as well as the child are very much attached to each other. Though the appellant is also in a position to financially maintain the child, the respondent is also a well to do person and is in a position to maintain the child. Apart from the aforesaid fact, it is also noticeable that the criminal trial against the appellant is pending and this must have created a lot of mental pressure on the appellant and resultantly it will also create some sort of pressure on the child who is of extremely tender age.

Hence, for the reasons recorded by the trial Court as well as the additional reasons recorded by this Court, the order passed by the trial Court on 23.02.2007 is confirmed. The first appeal is dismissed with no order as to costs.

JUDGE

APTE